IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.183 OF 2004
IN
FAMILY COURT APPEAL NO.72 OF 1997

Aishwarya Atul Pusalkar — Petitioner
vs.
Atul Shivram Pusalkar & anr. — Respondents

Mrs.A.S.Malvankar i/b. Mrs.Suhasini Mutalik for the applicant.

Mr.R.S.Apte for the respondents.

**CORAM : R. M. LODHA &**
**A.S.BAGGA, JJ.**

**DATED : 27th June, 2006**

**P.C.**

We heard the advocate for the applicant.

2. By this civil application, the applicant (original appellant) prays for clarification and modification of the order dated 14th July, 2000 passed in Civil Application No.2967/2000 in Family Court Appeal No.72/1997 and for direction to the respondents 1 and 2 to give to the applicant and her two sons the possession of newly constructed premises equivalent to the area surrendered by the applicant on 15th July, 2000 in 118,

Usha Building, Shivaji Park, Dadar.

3. On 14th July, 2000, the Division Bench passed the following order:

"Perused the record and heard the learned

Advocates on both sides.

2. On behalf of the respondent-husband, Mr.Jahagirdar, learned advocate, states, after taking instructions from one Monish Thakur, Partner of M/s.Buildarch, that the petitioner would be provided temporary accommodation at Flat No.20, First Floor, Bal Govindas Society, Manorama Nagarkar Marg, Mahim, Mumbai 400 016, during the period while the existing premises at 118, 2nd Floor, Usha, Shivaji Park, Dadar, Mumbai 400 028 is being reconstructed. After the said building known as "Usha" is reconstructed, the petitioner would be given accommodation jointly alongwith the respondent-husband in whichever premises the said respondent-husband occupies.

3. This order is being made without prejudice to the rights and contentions of the parties in the pending Family Court Appeal No.72 of 1997 and Family Court Appeal No.87 of 19976.

4. The alternative temporary accommodation at Flat No.20, First Floor, Bal Govindas Society, Manorama Nagarkar Marg, Mahim, Mumbai-400016 shall be made available immediately and the petitioner-wife shall hand over vacant possession of the premises occupied by her in Usha building and shift to the alternative premises at Flat No.20, First floor, Bal Govindas Society, Manorama Nagarkar Marg, Mahim, Munmbai 400 016 not later than 5.00 p.m. on 16th July 2000.

5. It is made clear that the petitioner-wife shall be entitled to move into the flat allotted to the respondent-husband on the day of which the respondent-husband moves thereinto.

6. These orders are subject to the outcome of Family Court Appeal No.72 of 1997 and Family Court Appeal No.87 of 1997.

7. Civil Application accordingly disposed of with no order as to costs.

8. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this Court."

4. In the order dated 14th July, 2000, it is clarified

that the arrangement is subject to and without prejudice to the rights and contentions of the parties in the Family Court Appeal No.72/1997 and Family Court Appeal No.87/1997.

5. We find from the record and proceedings that Family Court Appeal No.72/1997 and Family Court Appeal No.87/1997 have been finally disposed of by the Division Bench on 2nd July, 2001. Obviously, in view thereof, the present application made by the applicant for clarification and modification of the order dated 14th July, 2000 does not survive. However, the applicant shall be at liberty to take appropriate proceedings for redressal of her grievance regarding matrimonial home.

6. With the aforesaid observation, civil application is disposed of.

**(R.M. LODHA,J.)**

**(A.S. BAGGA,J.)**